



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the Application for Dispute Resolution with the applicant seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the applicant; his agent and both respondents.

The respondents submit that the applicant rents the rental unit from the owner of the unit and therefore does not have authority to act as a landlord and issue a notice to end tenancy. The applicant testified he has had a tenancy with his landlord for 11 years and that his landlord is aware of his arrangement with the respondents.

The parties agreed there is no written tenancy agreement and the arrangement between the applicant and respondents was originally that they would rent the unit for a 2 month period beginning in April 2012 and that this arrangement was later extended. The parties disagree on how it was extended.

The applicant testified that the arrangement was extended for another 2 month period and at the end of that period it was extended on a month to month basis but that the applicant would need the rental unit back sometime on or before April 2013. The applicant submits the respondents were aware that the applicant might require the rental unit back before April 2013. The respondents testified the tenancy began as a 2 month tenancy and then on a month to month basis with rent pre-paid to January 2013.

Section 1 of the *Residential Tenancy Act (Act)* defines a landlord as, among other things, a person, other than a tenant occupying the rental unit, who is entitled to possession of the rental unit, and exercises any of the rights of a landlord under a tenancy agreement or this *Act* in relation to the rental unit.

Residential Tenancy Policy Guideline 19 defines a sublease as a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the

original lessee, however such a sublease must be for a shorter period than the original lease. The sub-tenant does not take on any rights or obligations of the original tenancy that are not contained in the sub-agreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

The Guideline goes on to say that where an individual agrees to sublet a tenancy for the full period of the tenancy and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts to an assignment of the tenancy.

The Guideline defines an assignment as the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord.

I find, based on the balance of probabilities, the applicant's tenancy with his landlord, which has been for 11 years, is in no way a short term tenancy and is likely to continue on a long term basis.

From the testimony of both parties and in the absence of any evidence to the contrary, I find the parties entered into a tenancy agreement for a period of time that all had agreed to; that it was for a temporary period of time; and was intended to be for less than the full period of the applicant's tenancy. I find the parties agreed that applicant reserved some period of time at the end of the sublease to return to the rental unit. As such, I find the applicant has sublet the rental unit to the respondents and is the landlord in this tenancy arrangement.

While the landlord had originally submitted his Application for Dispute Resolution on October 29, 2012 it only sought an order of possession and recovery of the filing fee. The landlord later, on November 22, 2012, submitted an amendment to his original application which included seeking a monetary order in the amount of \$4,213.26 for damage to the rental unit; to retain the security deposit and for compensation for damage or loss for a violation of the *Act*, regulation or tenancy agreement.

At the outset of the hearing the tenants sought an adjournment because the landlord's amendments were provided too late for the tenants to be able to provide an adequate response and obtain necessary evidence such as a letter from the local fire chief in regard to the landlord's claim for an insurance deductible for a fire in another unit on the residential property.

I noted that the landlord had included in his monetary claim items such as damage to the unit, retention of the security deposit and bailiff fees in the event that the tenants would not leave in accordance with an order of possession. As the tenancy had not yet

ended at the time of the hearing I found these matters to be premature and advised the parties we would not be considering these items in this hearing.

The remaining issues of the landlord's monetary claim included storage costs for the landlord's restaurant equipment; costs for travelling between the landlord's current home community and the community where the rental unit is located; nominal stress; and the insurance deductible.

Residential Tenancy Branch Rule of Procedure 2.3 states that if, in the course of the dispute resolution proceeding, the arbitrator determines that it is appropriate to do so, the arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

Because a portion of the landlord's monetary claim is premature; the financial matters are unrelated to the notice to end tenancy; and the nature of the complexity of the terms of the tenancy, I find it necessary to dismiss all of the financial claims outlined in the landlord's Application. I grant the landlord leave to reapply on the financial matters.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlords use of the rental property and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49 and 55 of the *Act*.

Background and Evidence

As noted above the tenancy began on April 1, 2012 for a 2 month fixed term that has been extended by mutual agreement. However, the parties have disagreed on the terms of any of these extensions, also noted above. The parties do agree the rental amount is \$1,500.00 per month due on the 1st of each month.

The parties agree the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property on August 30, 2012 with an effective date of November 1, 2012 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The notice advises the tenants that they have the right to file an application to dispute the notice within 15 days of receipt of the notice and if they do not file an application

they are presumed to have accepted that the tenancy is ending on the effective date of the notice.

The tenants testified that they did not file an Application for Dispute Resolution based on information provided by 4 different Information Officers with the Residential Tenancy Branch who advised them that the landlord did not have authority to issue a notice to end tenancy because he rents the unit from the owner.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

I have reviewed all documentary evidence and testimony and accept that the tenants were served with a notice to end tenancy as declared by the landlord. I accept the evidence before me that the tenants failed to file an Application of Dispute Resolution seeking to cancel the Notice to End Tenancy within the 15 days granted under Section 49(8) of the *Act*.

I make no findings on the tenant's assertion regarding information received from the Residential Tenancy Branch and as I am bound by the requirements imposed on the tenants to dispute the Notice within 15 days under Section 49(8), I find the tenants are conclusively presumed under Section 49(9) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I note that during the hearing the parties provided testimony that the tenants may have paid the landlord rent in advance up to January 2013. I advise both parties that the landlord must return any portion of rent that the landlord would not be entitled to as a result of this decision and the end of the tenancy.

I also remind both parties that as the tenancy is ending as the result of the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property the tenants are entitled to compensation equivalent to one month's worth of rent that is to be provided to the tenants on or before the effective date of the end of the tenancy.

Should the landlord fail to return any overpaid rent or the compensation for ending the tenancy as noted above, the tenants will be at liberty to file an Application for Dispute Resolution to seek a monetary order against the landlord.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenants**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the landlord for this application.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 06, 2012.

Residential Tenancy Branch